

WSDOT Guidance on Isolated Wetlands

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After a U.S. Supreme Court ruling in the 2001 Solid Waste Agency of Northern Cook County v. Army Corps of Engineers (SWANCC) case, federal agencies no longer regulated isolated wetlands that lack a surface water connection to a navigable water body. Based on the Supreme Court's decisions on the combined Rapanos and Carabell (2006) cases, isolated wetlands may come under federal regulation on a case-by-case basis, depending on the presence of a significant nexus to a traditionally navigable water of the US.

The court rulings have not changed Washington state wetland laws. The state Clean Water Act (90.48 RCW) covers all "waters of the state," including isolated wetlands. As a result, the Washington State Department of Ecology (Ecology) uses Administrative Orders to protect isolated wetlands that the federal government no longer regulates.

What is an Isolated Wetland?

The U.S. Army Corps of Engineers (Corps) generally considers isolated wetlands to be those that are not adjacent to or connected via surface water to a navigable water body, such as a river, lake, or marine waters. Isolated wetlands have a very specific type of hydrologic isolation—they do not have a surface outlet by which water leaves the wetland, even seasonally, to another water body.

Some indicators of isolated wetlands include (Carson, 2004):

- A wetland fed by a spring that does not empty into any off-site area.
- Wetland hydrology based exclusively on seasonal precipitation and localized runoff from adjacent uplands.
- No definable drainage features that would allow the wetland to drain any nearby man-made or natural drainages.
- A wetland surrounded on all sides by a significant increase in elevation and upland soils.
- No signs of a discrete surface water conveyance carrying water out of the wetland (e.g., no channels or signs of regular sheet flow).
- Wetlands surrounded on all sides by upland soils and upland vegetative communities.

What Authority Does Washington State Have to Regulate Wetlands?

Two state laws authorize the Washington State Department of Ecology to regulate wetlands (Ecology 1998 and 2006):

- **State Water Pollution Control Act** (Chapter 90.48 RCW). The State Water Pollution Control Act (Act) mandates the protection of all uses and benefits of water including the water supply, commerce and navigation, recreation, fish and wildlife habitat, and aesthetics. The Act identifies Ecology as the lead state agency for implementing provisions of the federal CWA including Section 401. Section 401 requires Ecology to review and certify dredge and fill activities permitted under Section 404 of the CWA.

Proposed projects must meet state Surface Water Quality Standards. The Surface Water Quality Standards (Chapter 173-201A WAC) describe implementation of these laws. These standards include a federally mandated antidegradation policy (Chapter 173-201A-070 WAC). This policy provides the primary means for protecting water quality in Washington wetlands. The Act gives Ecology “jurisdiction to control and prevent the pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of Washington State.” Although the Act does not specifically mention wetlands, all wetlands are surface or underground water, or both.

- **Shoreline Management Act** (Chapter 90.58 RCW). The Shoreline Management Act (SMA) regulates only those wetlands within 200 feet of shoreline water bodies and wetlands “associated” with these water bodies. Some isolated wetlands may fit this category.

What has been the Result of the SWANCC Decision?

In January 2001, with the SWANCC decision, the U. S. Supreme Court limited the federal government’s authority to regulate intrastate, isolated wetlands. The court ruled that the Clean Water Act (CWA) does not apply to those “isolated” wetlands where the only interstate commerce connection is use by migratory birds. Prior to the SWANCC decision, permits from the Corps were needed to fill most isolated wetlands. Also prior to the SWANCC decision, with Section 404 permits, Ecology issued either a 401 certification or a state Administrative Order.

According to Ecology’s web page on [isolated wetlands](#) post-SWANCC decision, any project that calls for filling or altering an isolated wetland that is non-jurisdictional under Section 404 of CWA is still subject to regulation by the state. The state’s process for reviewing projects that involve isolated wetlands is different from the 401 Water Quality Certification process that is triggered by the Corps’ 404 permit. Rather, Ecology uses Administrative Orders to regulate projects that will have impacts to isolated wetlands. The standards of review remain the same as under 401 water-quality certifications—that is, the state Surface Water Quality Standards (WAC 173-201A). For more information about the review standards, see Ecology (1998 and 2006).

What is the result of the Rapanos decision?

Following the Rapanos Decision, some isolated wetlands may be jurisdictional under the CWA if there is a “significant nexus” to a traditionally navigable water of the U.S. The determination of a “significant nexus” considers the hydrologic and ecological factors of a connection to surface waters. It is possible that subsequent court cases or new guidance may change jurisdictional limits. For additional current information on this, and related issues see [WSDOT's Guidance on the Rapanos Case](#) and the [EPA/Corps Memorandum on Implementing Rapanos and Carabell](#).

What is the Current Process to Permit Impacts to Isolated Wetlands?

The general steps in the process to permit unavoidable impacts to isolated wetlands are summarized below. Applicants should also be aware that all wetlands in Washington are regulated under the state's Growth Management Act (GMA). Most cities and counties in Washington will require local approval for effects on isolated wetlands, under the GMA's Critical Areas Ordinances. Many cities and counties do not explicitly exempt isolated wetlands. Therefore, the permit process will likely vary depending on the site-specific situation and local jurisdiction.

General Process:

1. **WSDOT Delineates Wetland.** WSDOT delineates wetlands within a project area and evaluates whether any may be considered isolated. If a wetland fails the “adjacency” test (neighboring, bordering, or contiguous) with any navigable water, or if the wetland does not have a surface outlet that drains to navigable waters, then it may be isolated.
2. **WSDOT Requests a Jurisdictional Determination.** If the wetland could be considered “isolated,” WSDOT requests a jurisdictional determination from the Corps, Ecology, and any local jurisdiction (city or county). This can be done by submitting a [JD form](#) requesting that the regulatory agencies review the wetland to verify that it is isolated. The Corps has developed instructions about the required information: [USACE Instructional Guidebook](#).
3. **Corps Concurs with Isolated Wetland Determination.** If the Corps determines the wetland to be isolated, they will document their determination in a letter, which they will share with Ecology.
4. **WSDOT Requests an Administrative Order from Ecology.** To request an Administrative Order for a project that involves isolated wetlands, applicants should contact the Office of Regulatory Assistance at the Department of Ecology at (800)917-0043, (360)407-7037, or ecypac@ecy.wa.gov. The process involves completing Ecology's [“Isolated Wetlands Information Sheet”](#) and submitting it with any reports or documents that provide supporting information, such as the delineation report.

5. **Ecology Issues Administrative Order.** If Ecology concurs with the isolated wetland determination, they will issue an Administrative Order to WSDOT.

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